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Supreme Court of the United States

OCTOBER TERM, 1948

No. 445

KING DAVID and WILLIAM TALMADGE SPEARS,
Petitioners,

vs.

GEORGE A. SUTTON, Executor of the Estate of
Mansfield L. Spears, deceased;
EVA MAE SPEARS, as Special Administratrix,
and Individually, and
COMMUNITY NATIONAL BANK
of Pontiac, Michigan,
Respondents

ANSWER OF RESPONDENTS TO PETITION FOR WRIT OF CERTIORARI, AND CITATION OF AUTHORITIES

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ANSWER TO PETITION FOR WRIT OF CERTIORARI

Paragraph VIII of the Will of Mansfield L. Spears, deceased, bequeathed the "residue" of his estate to his heirs at law (R. 7), and Wm. Talmadge Spears, (deceased's son by a former wife) appeared in the Probate proceedings, by his present attorney, and claimed to be deceased's sole heir (other than Eva Mae Spears, the widow).

The Deceased, prior to his death, had maintained a joint bank account with his wife, Eva Mae Spears, in the Community National Bank of Pontiac, Michigan, in which account there was a balance of approximately $18,-196.00 when he died. The said son, and King David, the appellants herein, claimed that undue influence had been exerted upon deceased by the widow, in the making of the will and the creating of said "joint" bank account; whereupon the widow comenced action in the Chancery Court of Oakland County, Michigan, to determine the ownership of said bank account. A lengthy trial was had, resulting in a Circuit Court decree, holding that the money in the account had survived to the widow, Eva Mae Spears, and was no part of the deceased's estate (R. 15-17).

William T. Spears, King David, et al. (by their present attorney) also contested deceased's will by appeal to the Circuit Court of Oakland County, where trial was had. That trial resulted in a judgment sustaining said Will.

Appellants herein (by I. H. Spears, their present attorney) thereupon appealed from both county court decisions to the Supreme Court of Michigan, and in the meantime commenced the action now before this Court, in the U. S. District Court at Detroit, in which complaint it was alleged that said $18,196.00 bank account was still a part of deceased's estate (R. 3).

It then became known to the Oakland County Michigan Bar Association that I. H. Spears had obtained a Court Order admitting him to practise in Michigan, temporarily, upon his representation that he was a licensed practicing attorney in good standing, of the State of Florida, and also that his representations in that regard were false and untrue; that he had been admitted to practice in Florida about the year 1909, but that he had been indicted there for some alleged criminal offense; tried

before a jury and convicted, and sentenced to prison; that he had appealed to the Supreme Court of Florida, and upon such appeal the verdict had been set aside and a new trial ordered—on the ground that the prosecutor had failed to elect on which of three counts he relied for conviction—(See *Florida v. Spears* 59 Fla. 44 (51 So. 815)); and that a second trial was never had, but that thereupon (about the year 1911) the said I. H. Spears had moved out of the state of Florida and has not lived nor practiced there since. Said Bar association also learned that I. H. Spears has lived in California for the last 16 years, during which period he has been denied license to practice law in that State—because of his previous record. Consequently, upon Petition of the Oakland County Bar Association, the Oakland County Court, and also the Supreme Court of the State of Michigan, entered orders cancelling his right to continue to practise law in Michigan.

Thereafter, I. H. Spears, presented to the Michigan Supreme Court what he claimed were assignments to himself of his clients' interests in the subject matter of the litigation, and asked to be substituted as party appellant. Upon refusal of his request he pretended a Federal question had been raised, and appealed to this—the United States Supreme Court—in both cases (See Nos. 1286 and 1370, October Term 1946). Both appeals were dismissed for "want of jurisdiction," June 2, 1947.

The final disposition of the above mentioned litigation, permanently established the ownership of the $18,196.00 bank account as being in Eva Mae Spears, rather than a part of the Estate of Mansfield L. Spears, as alleged in the Federal Court Complaint in this cause.

The final account filed by the executor of said Estate showed the total net assets of said estate to be less than

$5,000.00, consequently, since the will contains specific legacies totaling $16,000.00, it is evident that appellants herein have no interest whatever in the subject matter of the litigation here involved.

The complaint filed in this action prays for a determination of heirs, but the Final Account as allowed by the local Probate Court found and determined appellant Wm. Talmadge Spears to be the sole heir of deceased—so that no contest exists on that point; and unless there is a dispute or contest the Federal Court was without jurisdiction.

This action is a mere attempt to open up and set aside the probate proceedings already concluded in the State Court, and obtain a secondary Probate of said Estate, and the Federal Court is without jurisdiction.

> *Guilfoil v. Hayes* 86 Fed. (2d) 544 (C. C. A. 4).
> *Broderick's Will* 88 U. S. 503.

Nor can the Federal Court seize and control property which is in the possession of the State Court.

> *Waterman v. Bank* 215 U. S. 33.
> *Markham v. Allen* 326 U. S. 490.

Nor can the Federal Court require an accounting of an executor of an estate being probated in the State Court.

> *Waterman v. Bank* 215 U. S. 33.
> *Princess Lida v. Thompson* 305 U. S. 456.

The Federal Court will not assume jurisdiction over the matters involved in litigation in a state court where the subject matter is *in rem*, and this belongs to that class of actions.

Broderick's Will 88 U. S. 503.
Sutton v. English 246 U. S. 205.
Farrell v. O'Brien 199 U. S. 89, 110, 111.
Calhoun v. Crocknell 202 Mich. 430.
Thompson v. Thompson 229 Mich. 526.
Markham v. Allen 326 U. S. 490.

The State Circuit Court decree holding the $18,196.00 bank account was no part of Mansfield L. Spears' estate was not void, as claimed by appellants, and it was necessary to apply to that Court to obtain such a determination. A Probate Court, in Michigan, is without jurisdiction to try or determine title to either personal or real property.

Mitchell v. Bay County Judge 155 Mich. 550 (119 N. W. 916).
Rudolph v. Gilbert 209 Mich. 141 (90 A. L. R. 134 note).

CONCLUSION

It is accordingly respectfully submitted that the District Court of United States of the Eastern District of Michigan, reached a proper conclusion upon the motion to dismiss as filed, and that the subsequent decision of the United States Circuit Court of Appeals for the Sixth Circuit was correct in sustaining the dismissal of said action by the lower Court, and that this application for Writ of Certiorari should be denied.

Respectfully submitted,

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